

AMENDED IN ASSEMBLY APRIL 18, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2619

Introduced by Assembly Member V. Manuel Pérez

February 24, 2012

An act to amend Sections 63010, 63030, 63031, 63034, and 63035 of, and to add Article 5.5 (commencing with Section 63047.1) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 2619, as amended, V. Manuel Pérez. Start-Up California Impact Investment Fund program.

The Bergeson-Peace Infrastructure and Economic Development Bank Act authorizes the California Infrastructure and Economic Development Bank, governed by a board of directors, to make loans and provide other assistance to public and private entities for various types of economic development projects, among other things. The activities of the bank under these provisions are funded from the California Infrastructure and Economic Development Bank Fund, which is continuously appropriated for these purposes.

This bill would create the Start-Up California Impact Investment Fund program to provide startup equity funds, as defined, to startup firms and small businesses. This bill would authorize the bank, *upon appropriation of the Legislature*, to make expenditures from the startup equity fund account, which is created within the Infrastructure and Economic Development Bank Fund, to invest in startup firms and small businesses pursuant to certain criteria, priorities, and guidelines, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) More than 90 percent of all jobs created come from small
4 and early stage firms, with most of these jobs coming from firms
5 that are less than five years old. The United States Census Bureau
6 shows that from 1990 to 2003, inclusive, nearly 80 percent of jobs
7 created came from firms that employ 20 or fewer employees.
8 Recent studies show that without entrepreneurs and startups, there
9 was no net job creation during the period of 1977 to 2005,
10 inclusive.

11 (b) National government leaders are beginning to take a more
12 serious look at ways to support business development. The White
13 House has led these efforts with the Start-Up America initiative
14 to increase the number and scale of new high-growth firms that
15 are creating economic growth, innovation, and quality jobs.

16 (c) Recently, as part of the Start-Up American Initiative, the
17 federal Small Business Administration has committed up to one
18 billion dollars (\$1,000,000,000) over the next five years to
19 guarantee early stage venture funds to encourage private sector
20 investment by lowering the credit risk.

21 (d) In response to national efforts, several states have recently
22 created, or will soon create, venture funds to support startups and
23 early stage firms. A dozen states have used their share of the federal
24 Small Business Credit Initiative as a source of capital for their
25 fund.

26 (e) While historically California has been a national leader in
27 startups and venture capital, the state's slow recovery from the
28 recession and the increasing competition from other states
29 illustrates the need for the Legislature to act.

30 (f) In order to stimulate the economy and create new quality
31 jobs in this state, the Legislature must establish a startup equity
32 investment fund to support startup firms and small businesses.

33 SEC. 2. Section 63010 of the Government Code is amended
34 to read:

1 63010. For purposes of this division, the following words and
2 terms shall have the following meanings unless the context clearly
3 indicates or requires another or different meaning or intent:

4 (a) “Act” means the Bergeson-Peace Infrastructure and
5 Economic Development Bank Act.

6 (b) “Bank” means the California Infrastructure and Economic
7 Development Bank.

8 (c) “Board” or “bank board” means the Board of Directors of
9 the California Infrastructure and Economic Development Bank.

10 (d) “Bond purchase agreement” means a contractual agreement
11 executed between the bank and a sponsor, or a special purpose
12 trust authorized by the bank or a sponsor, or both, whereby the
13 bank or special purpose trust authorized by the bank agrees to
14 purchase bonds of the sponsor for retention or sale.

15 (e) “Bonds” means bonds, including structured, senior, and
16 subordinated bonds or other securities; loans; notes, including
17 bond, revenue, tax or grant anticipation notes; commercial paper;
18 floating rate and variable maturity securities; and any other
19 evidences of indebtedness or ownership, including certificates of
20 participation or beneficial interest, asset backed certificates, or
21 lease-purchase or installment purchase agreements, whether taxable
22 or excludable from gross income for federal income taxation
23 purposes.

24 (f) “Cost,” as applied to a project or portion thereof financed
25 under this division, means all or any part of the cost of construction,
26 renovation, and acquisition of all lands, structures, real or personal
27 property, rights, rights-of-way, franchises, licenses, easements,
28 and interests acquired or used for a project; the cost of demolishing
29 or removing any buildings or structures on land so acquired,
30 including the cost of acquiring any lands to which the buildings
31 or structures may be moved; the cost of all machinery, equipment,
32 and financing charges; interest prior to, during, and for a period
33 after completion of construction, renovation, or acquisition, as
34 determined by the bank; provisions for working capital; reserves
35 for principal and interest and for extensions, enlargements,
36 additions, replacements, renovations, and improvements; and the
37 cost of architectural, engineering, financial and legal services,
38 plans, specifications, estimates, administrative expenses, and other
39 expenses necessary or incidental to determining the feasibility of
40 any project or incidental to the construction, acquisition, or

1 financing of any project, and transition costs in the case of an
2 electrical corporation.

3 (g) “Economic development facilities” means real and personal
4 property, structures, buildings, equipment, and supporting
5 components thereof that are used to provide industrial, recreational,
6 research, commercial, utility, or service enterprise facilities,
7 community, educational, cultural, or social welfare facilities and
8 any parts or combinations thereof, and all facilities or infrastructure
9 necessary or desirable in connection therewith, including provision
10 for working capital, but shall not include any housing.

11 (h) (1) “Electrical corporation” has the meaning set forth in
12 Section 218 of the Public Utilities Code.

13 (2) “*Emerging domestic market*” means business enterprises
14 with growth potential, which, due to their geographic location,
15 have historically faced capital constraints due to systemic
16 undervaluation as a result of imperfect market information.

17 (3) “*Emerging money manager*” means a money manager on
18 his or her first or second fund iteration.

19 (i) “Equity financing” means the shares of common or preferred
20 stock issued by a startup firm or small business to the bank in
21 exchange for capital.

22 (j) “Executive director” means the Executive Director of the
23 California Infrastructure and Economic Development Bank
24 appointed pursuant to Section 63021.

25 (k) “Financial assistance” in connection with a project, includes,
26 but is not limited to, any combination of grants, loans, the proceeds
27 of bonds issued by the bank or special purpose trust, insurance,
28 guarantees or other credit enhancements or liquidity facilities, and
29 contributions of money, property, labor, or other things of value,
30 as may be approved by resolution of the board or the sponsor, or
31 both; the purchase or retention of bank bonds, the bonds of a
32 sponsor for their retention or for sale by the bank, or the issuance
33 of bank bonds or the bonds of a special purpose trust used to fund
34 the cost of a project for which a sponsor is directly or indirectly
35 liable, including, but not limited to, bonds, the security for which
36 is provided in whole or in part pursuant to the powers granted by
37 Section 63025; bonds for which the bank has provided a guarantee
38 or enhancement, including, but not limited to, the purchase of the
39 subordinated bonds of the sponsor, the subordinated bonds of a
40 special purpose trust, or the retention of the subordinated bonds

1 of the bank pursuant to Chapter 4 (commencing with Section
2 63060); or any other type of assistance deemed appropriate by the
3 bank or the sponsor, except that no direct loans shall be made to
4 nonpublic entities other than in connection with the issuance of
5 rate reduction bonds pursuant to a financing order or in connection
6 with a financing for an economic development facility.

7 For purposes of this subdivision, “grant” does not include grants
8 made by the bank except when acting as an agent or intermediary
9 for the distribution or packaging of financing available from
10 federal, private, or other public sources.

11 (l) “Financing order” has the meaning set forth in Section 840
12 of the Public Utilities Code.

13 (m) “Guarantee trust fund” means the California Infrastructure
14 Guarantee Trust Fund.

15 (n) (1) *“Impact investments” means investments made in*
16 *companies, organizations, and funds with the intention to generate*
17 *financial risk adjusted returns, as well as measurable social and*
18 *environmental impacts.*

19 ~~(n)~~

20 (2) “Infrastructure bank fund” means the California
21 Infrastructure and Economic Development Bank Fund.

22 (o) “Loan agreement” means a contractual agreement executed
23 between the bank or a special purpose trust and a sponsor that
24 provides that the bank or special purpose trust will loan funds to
25 the sponsor and that the sponsor will repay the principal and pay
26 the interest and redemption premium, if any, on the loan.

27 (p) “Participating party” means any person, company,
28 corporation, association, state or municipal governmental entity,
29 partnership, firm, or other entity or group of entities, whether
30 organized for profit or not for profit, engaged in business or
31 operations within the state and that applies for financing from the
32 bank in conjunction with a sponsor for the purpose of implementing
33 a project. However, in the case of a project relating to the financing
34 of transition costs or the acquisition of transition property, or both,
35 on the request of an electrical corporation, or in connection with
36 a financing for an economic development facility, or for the
37 financing of insurance claims, the participating party shall be
38 deemed to be the same entity as the sponsor for the financing.

39 (q) “Project” means designing, acquiring, planning, permitting,
40 entitling, constructing, improving, extending, restoring, financing,

1 and generally developing public development facilities or economic
2 development facilities within the state or financing transition costs
3 or the acquisition of transition property, or both, upon approval of
4 a financing order by the Public Utilities Commission, as provided
5 in Article 5.5 (commencing with Section 840) of Chapter 4 of Part
6 1 of Division 1 of the Public Utilities Code.

7 (r) “Public development facilities” means real and personal
8 property, structures, conveyances, equipment, thoroughfares,
9 buildings, and supporting components thereof, excluding any
10 housing, that are directly related to providing the following:

11 (1) “City streets” including any street, avenue, boulevard, road,
12 parkway, drive, or other way that is any of the following:

13 (A) An existing municipal roadway.

14 (B) Is shown upon a plat approved pursuant to law and includes
15 the land between the street lines, whether improved or unimproved,
16 and may comprise pavement, bridges, shoulders, gutters, curbs,
17 guardrails, sidewalks, parking areas, benches, fountains, plantings,
18 lighting systems, and other areas within the street lines, as well as
19 equipment and facilities used in the cleaning, grading, clearance,
20 maintenance, and upkeep thereof.

21 (2) “County highways” including any county highway as defined
22 in Section 25 of the Streets and Highways Code, that includes the
23 land between the highway lines, whether improved or unimproved,
24 and may comprise pavement, bridges, shoulders, gutters, curbs,
25 guardrails, sidewalks, parking areas, benches, fountains, plantings,
26 lighting systems, and other areas within the street lines, as well as
27 equipment and facilities used in the cleaning, grading, clearance,
28 maintenance, and upkeep thereof.

29 (3) “Drainage, water supply, and flood control” including, but
30 not limited to, ditches, canals, levees, pumps, dams, conduits,
31 pipes, storm sewers, and dikes necessary to keep or direct water
32 away from people, equipment, buildings, and other protected areas
33 as may be established by lawful authority, as well as the
34 acquisition, improvement, maintenance, and management of
35 floodplain areas and all equipment used in the maintenance and
36 operation of the foregoing.

37 (4) “Educational facilities” including libraries, child care
38 facilities, including, but not limited to, day care facilities, and
39 employment training facilities.

1 (5) “Environmental mitigation measures” including required
2 construction or modification of public infrastructure and purchase
3 and installation of pollution control and noise abatement
4 equipment.

5 (6) “Parks and recreational facilities” including local parks,
6 recreational property and equipment, parkways and property.

7 (7) “Port facilities” including docks, harbors, ports of entry,
8 piers, ships, small boat harbors and marinas, and any other
9 facilities, additions, or improvements in connection therewith.

10 (8) “Power and communications” including facilities for the
11 transmission or distribution of electrical energy, natural gas, and
12 telephone and telecommunications service.

13 (9) “Public transit” including air and rail transport of goods,
14 airports, guideways, vehicles, rights-of-way, passenger stations,
15 maintenance and storage yards, and related structures, including
16 public parking facilities, equipment used to provide or enhance
17 transportation by bus, rail, ferry, or other conveyance, either
18 publicly or privately owned, that provides to the public general or
19 special service on a regular and continuing basis.

20 (10) “Sewage collection and treatment” including pipes, pumps,
21 and conduits that collect wastewater from residential,
22 manufacturing, and commercial establishments, the equipment,
23 structures, and facilities used in treating wastewater to reduce or
24 eliminate impurities or contaminants, and the facilities used in
25 disposing of, or transporting, remaining sludge, as well as all
26 equipment used in the maintenance and operation of the foregoing.

27 (11) “Solid waste collection and disposal” including vehicles,
28 vehicle-compatible waste receptacles, transfer stations, recycling
29 centers, sanitary landfills, and waste conversion facilities necessary
30 to remove solid waste, except that which is hazardous as defined
31 by law, from its point of origin.

32 (12) “Water treatment and distribution” including facilities in
33 which water is purified and otherwise treated to meet residential,
34 manufacturing, or commercial purposes and the conduits, pipes,
35 and pumps that transport it to places of use.

36 (13) “Defense conversion” including, but not limited to, facilities
37 necessary for successfully converting military bases consistent
38 with an adopted base reuse plan.

1 (14) “Public safety facilities” including, but not limited to, police
2 stations, fire stations, court buildings, jails, juvenile halls, and
3 juvenile detention facilities.

4 (15) “State highways” including any state highway as described
5 in Chapter 2 (commencing with Section 230) of Division 1 of the
6 Streets and Highways Code, and the related components necessary
7 for safe operation of the highway.

8 (16) (A) Military infrastructure, including, but not limited to,
9 facilities on or near a military installation, that enhance the military
10 operations and mission of one or more military installations in this
11 state. To be eligible for funding, the project shall be endorsed by
12 the Office of Military and Aerospace Support established pursuant
13 to Section 13998.2.

14 (B) For purposes of this subdivision, “military installation”
15 means any facility under the jurisdiction of the Department of
16 Defense, as defined in paragraph (1) of subsection (e) of Section
17 2687 of Title 10 of the United States Code.

18 (s) “Rate reduction bonds” has the meaning set forth in Section
19 840 of the Public Utilities Code.

20 (t) “Revenues” means all receipts, purchase payments, loan
21 repayments, lease payments, and all other income or receipts
22 derived by the bank or a sponsor from the sale, lease, or other
23 financing arrangement undertaken by the bank, a sponsor or a
24 participating party, including, but not limited to, all receipts from
25 a bond purchase agreement, and any income or revenue derived
26 from the investment of any money in any fund or account of the
27 bank or a sponsor and any receipts derived from transition property.
28 Revenues shall not include moneys in the General Fund of the
29 state.

30 (u) “Special purpose trust” means a trust, partnership, limited
31 partnership, association, corporation, nonprofit corporation, or
32 other entity authorized under the laws of the state to serve as an
33 instrumentality of the state to accomplish public purposes and
34 authorized by the bank to acquire, by purchase or otherwise, for
35 retention or sale, the bonds of a sponsor or of the bank made or
36 entered into pursuant to this division and to issue special purpose
37 trust bonds or other obligations secured by these bonds or other
38 sources of public or private revenues. Special purpose trust also
39 means any entity authorized by the bank to acquire transition
40 property or to issue rate reduction bonds, or both, subject to the

1 approvals by the bank and powers of the bank as are provided by
2 the bank in its resolution authorizing the entity to issue rate
3 reduction bonds.

4 (v) "Sponsor" means any subdivision of the state or local
5 government including departments, agencies, commissions, cities,
6 counties, nonprofit corporations formed on behalf of a sponsor,
7 special districts, assessment districts, and joint powers authorities
8 within the state or any combination of these subdivisions that
9 makes an application to the bank for financial assistance in
10 connection with a project in a manner prescribed by the bank. This
11 definition shall not be construed to require that an applicant have
12 an ownership interest in the project. In addition, an electrical
13 corporation shall be deemed to be the sponsor as well as the
14 participating party for any project relating to the financing of
15 transition costs and the acquisition of transition property on the
16 request of the electrical corporation and any person, company,
17 corporation, partnership, firm, or other entity or group engaged in
18 business or operation within the state that applies for financing of
19 any economic development facility, shall be deemed to be the
20 sponsor as well as the participating party for the project relating
21 to the financing of that economic development facility.

22 (w) "Startup equity funds" means money and resources invested
23 in startup firms and small businesses with exceptional growth
24 potential. In exchange for this capital, the bank receives an equity
25 stake in the firm or business represented by shares of common or
26 preferred stock.

27 (x) "State" means the State of California.

28 (y) "Transition costs" has the meaning set forth in Section 840
29 of the Public Utilities Code.

30 (z) "Transition property" has the meaning set forth in Section
31 840 of the Public Utilities Code.

32 SEC. 3. Section 63030 of the Government Code is amended
33 to read:

34 63030. (a) Bonds issued by the bank or a special purpose trust
35 are legal investments for all trust funds, the funds of all insurance
36 companies, banks, both commercial and savings, trust companies,
37 executors, administrators, trustees, and other fiduciaries, for state
38 school funds, pension funds, and for any funds that may be invested
39 in county, school, or municipal bonds. These bonds are securities
40 that may legally be deposited with, and received by, any state or

1 municipal officer or agency or political subdivision of the state
2 for any purpose for which the deposit of bonds or obligations of
3 the state is now, or may hereafter be, authorized by law, including,
4 deposits to secure public funds.

5 (b) Startup equity funds established by the bank are legal
6 investments for all trust funds, the funds for all insurance
7 companies, banks, both commercial and savings, trust companies,
8 executors, administrators, trustees, and other fiduciaries, for state
9 and local pension funds.

10 SEC. 4. Section 63031 of the Government Code is amended
11 to read:

12 63031. (a) Liability shall not be incurred by the bank beyond
13 the extent to which funds have been provided under this division.
14 However, for the purposes of meeting the necessary expenses of
15 initial organization and operation until the date that the bank
16 derives revenues or proceeds from bonds as provided under this
17 division, the bank may borrow money as needed for the purposes
18 of meeting the necessary expenses of initial organization and
19 operation from the Pooled Money Investment Account, as specified
20 in subdivision (w) of Section 63025.1 or from any special funds,
21 including the special funds of existing financing authorities. The
22 borrowed money shall be repaid with interest within a reasonable
23 time after the bank receives revenues or proceeds from bonds as
24 provided under this division.

25 (b) Liability shall not be incurred by the bank or the state as
26 related to a startup equity fund beyond the money that is available
27 for expenditure in the startup equity fund account.

28 SEC. 5. Section 63034 of the Government Code is amended
29 to read:

30 63034. The bank shall establish a reasonable schedule of
31 administrative fees, which shall be paid by the sponsor or the
32 participating party pursuant to Section 63074 and by the startup
33 firm or small business pursuant to Section 63047.2, to reimburse
34 the state for the costs of administering this division.

35 SEC. 6. Section 63035 of the Government Code is amended
36 to read:

37 63035. The bank shall, before November 2 of each year, submit
38 to the Governor and the Joint Legislative Budget Committee a
39 report of its activities pursuant to this division for the preceding
40 fiscal year. The report shall include all of the following:

1 (a) (1) A listing of applications accepted, including a description
2 of the expected employment impact of each project.

3 (2) A separate summary of applications for the Infrastructure
4 State Revolving Fund Program, including a summary of the number
5 of preliminary applications that did not receive funding and the
6 reason the applicant did not qualify.

7 (3) A separate summary of the *investment firms that were*
8 *awarded startup equity fund investments, including the number*
9 *of investments, moneys, including their industry sector and*
10 *geographic focus, and a list of the investments made with startup*
11 *equity fund moneys by asset manager, including the size of each*
12 *investment, and the type of firm, by industry sector and geographic*
13 *location of headquarters, that received an investment. The*
14 *summary shall also include a description of the expected direct*
15 *and indirect employment impact of the investments.*

16 (b) A specification of bonds sold and interest rates thereon.

17 (c) The amount of other public and private funds leveraged by
18 the assistance provided.

19 (d) A report of revenues and expenditures for the preceding
20 fiscal year, including all of the bank's costs. The information
21 provided pursuant to this subdivision shall include, but need not
22 be limited to, both of the following:

23 (1) The amount and source of total bank revenues. Revenues
24 shall be shown by main categories of revenues, including interest
25 earnings, compensation received from startup equity fund
26 investments, the amount of startup equity funds, available for
27 distribution, fees collected, and bond proceeds, for each bank
28 program.

29 (2) The amount and type of total bank expenditures.
30 Expenditures shall be shown by major categories of expenditures,
31 including startup equity fund investments made, loans provided,
32 debt service payments, and program support costs, for each bank
33 program.

34 (e) A projection of the bank's needs and requirements for the
35 coming year.

36 (f) Recommendations for changes in state and federal law
37 necessary to meet the objectives of this division.

38 SEC. 7. Article 5.5 (commencing with Section 63047.1) is
39 added to Chapter 2 of Division 1 of Title 6.7 of the Government
40 Code, to read:

Article 5.5. Start-Up California Impact Investment Fund
Program

63047.1. (a) There is created at the bank the Start-Up California Impact Investment Fund program to provide startup equity funds to startup firms and small businesses.

(b) The bank may make expenditures, *upon appropriation of the Legislature*, from the startup equity fund account, which is hereby created within the Infrastructure and Economic Development Bank Fund, to invest in startup firms and small businesses pursuant to the criteria, priorities, and guidelines adopted by the bank pursuant to Section 63047.2.

63047.2. (a) ~~After consulting—The bank shall consult with appropriate state and local agencies and investors who have impact investment policies that target businesses in lower income communities, the bank shall establish criteria, priorities, and guidelines for the selection of startup firms and small businesses to receive startup equity funds from the bank. Startup equity fund investments shall comply with the criteria, priorities, and guidelines adopted by the bank.~~ *emerging money managers, or emerging domestic markets.*

(b) *After the consultation pursuant to subdivision (a), the bank shall adopt an investment policy and establish criteria, priorities, and guidelines for the selection of startup firms and small businesses to receive startup equity funds from the bank. Startup equity fund investments shall comply with the criteria, priorities, and guidelines adopted by the bank.*

(b)
(c) The criteria, priorities, and guidelines shall, at a minimum, do all of the following:

(1) Encourage the establishment of startup firms and growth of early stage small businesses.

(2) Offer financial opportunities to emerging *money managers* ~~who have mentoring agreements with equity asset managers with proven track records, have been in business for more than five years, and have raised two or more equity funds of five hundred million dollars (\$500,000,000) or more.~~

(3) *Encourage mentoring relationships of emerging money managers by equity asset managers with proven track records, including having been in business for more than five years, and*

1 *having raised three or more equity funds of five hundred million*
2 *dollars (\$500,000,000) or more. This may include the bank*
3 *partnering with investors, such as CalPERS and CalSTRS, that*
4 *have impact investment programs or emerging manager programs,*
5 *or both.*

6 ~~(3)~~

7 (4) Support business development in lower income areas of the
8 state.

9 ~~(4)~~

10 (5) Require reporting of the social and environmental impacts
11 of the investments on an annual basis.

12 ~~(5)~~

13 (6) Encourage business development that includes the export
14 of products from California.

15 ~~(6)~~

16 (7) Encourage businesses that are manufacturing overseas to
17 bring production lines back to the United States and products to
18 be made in California.

19 ~~(e)~~

20 (d) (1) The bank may contract with professional equity fund
21 managers who have demonstrated expertise in ~~economically~~
22 ~~targeted~~ *emerging domestic market* investments and impact
23 investment mandates to implement the Start-Up California Impact
24 Investment Fund program.

25 (2) *The bank shall adopt appropriate guidelines and policies*
26 *for overseeing these contracts that shall provide for an effective*
27 *program while ensuring transparency and accountability of public*
28 *moneys.*

29 63047.3. ~~This section~~ *The authority provided in this article*
30 *shall not apply to any other financing provided by the bank.*